

Author: Committee On Budget and Fiscal Review Analyst: Janet Jennings Bill Number: SB 856
 Related Bills: See Legislative History Telephone: 845-3495 Amended Date: October 7, 2010
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: California Prompt Payment Act/Collection Of DIR's Delinquent Assessments/FTB Disclosure Of Tax Return Information To Public For Data Required For Early Retiree Reinsurance Program/Statutory Changes Made Necessary By Gov Reorg Plan #1 Of 2009

SUMMARY

This bill provides for various changes to governmental programs and fees, and provides for specified disclosure of tax return information to the California Public Employee Retirement System (PERS).

SUMMARY OF AMENDMENTS

The October 7, 2010, amendments replaced legislative intent language with provisions to allow for various changes to governmental programs and fees, and to authorize specified disclosure of tax return information to the PERS.

Specifically, this bill would do the following:

- Provision 1: Revise and recast the California Prompt Payment Act.
- Provision 2: Provide requirements for the State Chief Information Officer (CIO) regarding service contracts that contain an information technology component.
- Provision 3: Allow the Department of Industrial Relations (DIR) to contract with the Employment Development Department (EDD) for debt collection.
- Provision 4: Permit the disclosure of tax return information to the PERS.

This is the department's first analysis of the bill.

This analysis only addresses provisions of the bill that would impact the Franchise Tax Board (FTB).

PURPOSE OF THE BILL

According to the language of the bill, the purpose is to ensure governmental efficiencies.

Board Position: _____ S _____ NA _____ NP _____ SA _____ O _____ NAR _____ N _____ OUA _____ <u>X</u> PENDING	<table> <tr> <td>Department Director</td><td>Date</td></tr> <tr> <td>Selvi Stanislaus</td><td>10/14/10</td></tr> </table>	Department Director	Date	Selvi Stanislaus	10/14/10
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EFFECTIVE/OPERATIVE DATE

As an urgency measure, this bill would be effective and operative immediately upon enactment.

POSITION

Pending.

IMPLEMENTATION CONSIDERATIONS

Implementation of Provisions 1-4 would not significantly impact the department's programs or operations.

ECONOMIC IMPACT

Provisions 1-4 would not impact the state's income tax revenue.

PROVISION 1: REVISE AND RECAST THE CALIFORNIA PROMPT PAYMENT ACT

ANALYSIS

STATE LAW

Current law, known as the Prompt Payment Act, provides for a state agency to pay interest on any undisputed payment or refund due after the 31st day the payment or refund is due, and the 31st day after a disputed amount is settled. The interest rate is mandated as the amount accrued in the Pooled Money Investment Account minus 1 percent over the term that the payment or refund was held by the agency.

THIS PROVISION

This provision would repeal the section in the Government Code related to interest due on payments or refunds and add a section for the assessment and automatic payment of interest-based penalties if undisputed payments and refunds related to service contracts or vendors are not issued within 45 days of receipt or notification from the payee.

Payments, refunds, or credits for income tax purposes would be excluded from the terms of this provision.

This provision would define the following:

- "Claim Schedule" would mean a schedule of payment requests submitted by a state agency to the Controller for payment of a named client.
- "Invoices" would mean a bill or claim that requests payment on a contract under which a state agency acquires property or services or pursuant to a signed final grant agreement.

- “Nonprofit public benefit corporation” would mean a corporation, as defined by subdivision (b) of Section 5046 of the Corporations Code that has registered with the Department of General Services as a small business.
- “Nonprofit service organization” would mean a nonprofit entity that is organized to provide services to the public.
- “Notice of refund or other payment due” would mean a state agency provides notice to the person that a refund or payment is owed to that person or the state agency receives notice from the person that a refund or undisputed payment is due.
- “Payment” would mean any form of the act of paying, including, but not limited to, the issuance of a warrant or a registered warrant by the Controller, or the issuance of a revolving fund check by a state agency, to a claimant in the amount of an undisputed invoice.
- “Reasonable cause” would mean a determination by a state agency that any of the following conditions are present:
 - There is a discrepancy between the invoice or claimed amount and the provisions of the contract or grant.
 - There is a discrepancy between the invoice or claimed amount and either the claimant's actual delivery of property or services to the state or the state's acceptance of those deliveries.
 - Additional evidence supporting the validity of the invoice or claimed amount is required to be provided to the state agency by the claimant.
 - The invoice has been improperly executed or needs to be corrected by the claimant.
 - There is a discrepancy between the refund or other payment due as calculated by the person to whom the money is owed and by the state agency.
- “Required payment approval date” would mean the date on which payment is due as specified in a contract or grant or, if a specific date is not established by the contract or grant, 30 calendar days following the date upon which an undisputed invoice is received by a state agency.
- “Revolving fund” would mean a fund established pursuant to the Government Code.¹
- “Small business” would mean a business certified as a "small business" in accordance with the Government Code.²

¹ Article 5 (commencing with Section 16400) of Division 4 of Title 2 of the Government Code.

² Section 14837 subdivision (d) of the Government Code.

Under this provision, unless a state agency directly pays an undisputed invoice or refund, undisputed invoices and refunds would need to be submitted to the Controller for payment by the required approval date. If an invoice or refund is in dispute, the state agency would need to notify the claimant within 15 working days from the receipt of the invoice, or delivery of property or services, whichever is later.

State agencies would pay the applicable penalties, without requiring that the claimant submit an additional invoice for these amounts, whenever the state agency fails to submit a correct claim schedule to the Controller by the required payment approval date and payment is not issued within 45 calendar days from the state agency receipt of an undisputed invoice. The penalty would cease to accrue on the date the state agency submits the claim schedule to the Controller for payment or pays the claimant directly, and would be paid for out of the state agency's support appropriation. If the claimant is a certified small business, a nonprofit organization, a nonprofit public benefit corporation, or a small business or nonprofit organization that provides services or equipment under the Medi-Cal program, the state agency would pay to the claimant a penalty at a rate of 10 percent above the United States Prime Rate on June 30 of the prior fiscal year. If the amount of the penalty is \$10 or less, the penalty would be waived.

For claimants other than a certified small business, a nonprofit organization, a nonprofit public benefit corporation, or a small business or nonprofit organization that provides services or equipment under the Medi-Cal program, the state agency would pay a penalty at a rate of 1 percent above the Pooled Money Investment Account daily rate on June 30 of the prior fiscal year, not to exceed a rate of 15 percent. If the amount of the penalty is \$100 or less, the penalty would be waived. On an exception basis, state agencies could avoid payment of penalties for failure to submit a correct claim schedule to the Controller by the required payment approval date by paying the claimant directly from the state agency's revolving fund within 45 calendar days following the date upon which an undisputed invoice is received by the state agency.

On an annual basis, within 90 calendar days following the end of each fiscal year, state agencies would be required to provide the Director of General Services (director) with a report on late payment penalties that were paid by the state agency during the preceding fiscal year under the terms of this bill. The report would need to separately identify the total number and dollar amount of late payment penalties paid to small businesses, other businesses, and refunds or other payments to individuals. State agencies could, at their own initiative, provide the director with other relevant performance measures. The director would be required to prepare a report separately listing the number and total dollar amount of all late payment penalties paid to small businesses, other businesses, and refunds and other payments to individuals by each state agency during the preceding fiscal year, together with other relevant performance measures, and would be required to make the information available to the public.

No penalty would accrue during any time period for which there is no Budget Act in effect, or on any payment or refund that would become due as a result of a federally mandated program or that would be directly dependent upon the receipt of federal funds by a state agency.

FISCAL IMPACT

This provision would not impact the department's costs.

PROVISION 2: PROVIDE REQUIREMENTS FOR THE CIO REGARDING SERVICE CONTRACTS CONTAINING INFORMATION TECHNOLOGY COMPONENTS

ANALYSIS

STATE LAW

Current law excludes service contracts with information technology components from CIO approval and oversight.

THIS PROVISION

This provision would require any service contract proposed to be entered into by an agency that contains an information technology component to be subject to oversight by the office of the CIO. The CIO would request reimbursement for the costs associated with the review from the agency.

FISCAL IMPACT

Until the CIO establishes the reimbursement costs for contract review, the FTB is unable to determine the implementation costs associated with this provision. A budget change proposal would be developed to provide specific details when costing is complete.

PROVISION 3: ALLOW THE DIR TO CONTRACT WITH THE EMPLOYMENT DEVELOPMENT DEPARTMENT (EDD) FOR DEBT COLLECTION

ANALYSIS

STATE LAW

Current law provides for the FTB to collect debts due to the DIR.

THIS PROVISION

This provision would expand the existing authority of the Director of the DIR to refer unpaid assessments and penalties to the EDD.

FISCAL IMPACT

Current law allows unpaid DIR assessments and penalties to be referred to the FTB for collection. Therefore, this provision would not impact the department's costs.

PROVISION 4: PERMIT THE DISCLOSURE OF TAX RETURN INFORMATION TO PERS

ANALYSIS

STATE LAW

Current law precludes the disclosure of tax return information unless specifically authorized.

THIS PROVISION

This provision would allow the FTB to provide the PERS the name, address, and other identification or location information from tax returns until June 30, 2016, for the purpose of filing required data pursuant to the Early Retiree Reinsurance Program.³

FISCAL IMPACT

Reimbursement for providing information, as required in this provision, would generally be provided to the FTB through an interagency contract.

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³ Sec.1102, Public Law 111-148; 42 U.S.C. Sec.18002, Part 149 of Title 45 of the Code of Federal Regulations.